

OCT 20 2000

CLERK, SUPREME COURT  
BY \_\_\_\_\_

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION  
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE  
MATTHEW E. MCMILLAN  
CASE NO. 00-17

SC CASE NO. SC00-703

MOTION IN LIMINE

The HONORABLE MATTHEW E. MCMILLAN, by and through his undersigned counsel, hereby files this Motion in Limine requesting this Hearing Panel to exclude Judicial Qualifications Commission's witnesses and exhibits that are not offered to prove the allegations as set forth in its Notices of Formal Charges. In support of this Motion in Limine, Judge McMillan sets forth the following arguments.

I. Witnesses or exhibits pertaining to Matthew Thompson are irrelevant to the allegations in the Notices of Formal Charges and should be excluded.

Judge McMillan seeks the exclusion of any witness testimony or exhibits offered to suggest or prove any misconduct related to Matthew Thompson since no allegations concerning Matthew Thompson were included in the Notices of Formal Charges. Counsel's apparent purpose for offering witness testimony and exhibits concerning Matthew Thompson is to assert that Judge McMillan has a propensity to act improperly in conflict situations.

The attempt to use other similar instances in which Judge McMillan allegedly failed to recuse himself and which were not referenced in the Notices of Formal Charges is improper and should not be permitted by this Hearing Panel. Judicial Qualification Rule 14 states, "At a hearing before the Hearing Panel, legal evidence only shall be received and oral evidence

shall be taken only on oath or affirmation." Fla. Jud. Qual. Comm'n R. 14 (emphasis added). Accordingly, the Florida Rules of Evidence are applicable to these proceedings. Florida Statutes, section 90.404.(2)(a) states, in pertinent part, "similar fact evidence of other crimes, wrongs or acts is admissible when relevant to prove a material fact . . . but it is inadmissible when the evidence is relevant solely to prove bad character or propensity." Fla. Stat. § 90.404(2)(a).

In this case, evidence concerning Matthew Thompson is not material to any charged allegation. Since the Judicial Qualification Commission's purpose in offering this evidence is to assert that Judge McMillan had a propensity or willingness to act in a certain manner, this evidence is inadmissible by the express language of the evidence code. Accordingly, Judicial Qualification Exhibits 23, 24, 25, 26 and 27 should be excluded and witnesses should not be permitted to testify concerning the criminal cases of Matthew Thompson.

II. Evidence pertaining to any uncharged allegations of lack of candor should be excluded.


The Florida Evidence Code prohibits using specific instances of conduct to prove character unless that specific trait or characteristic is an essential element of the allegations. Fla. Stat. § 90.405(2). Furthermore, the JQC has not charged, alleged, suggested or implied that Judge McMillan has been untruthful or lacked candor in these proceedings. Accordingly, the Judicial Qualifications Commission should be precluded from

offering any evidence of any uncharged incident in which it is alleged that Judge McMillan lacked candor or truthfulness. Such proffers are improper character impeachment and are not relevant to an essential element of the allegations in the Notices of Formal Charges.

Moreover, the Florida Supreme Court has specifically held that the Judicial Qualifications Commission is permitted to utilize lack of candor as a basis to reprimand or remove a judge only where the instance of lack of candor is formally charged. In re Davey, 645 So. 2d 398 (Fla. 1994); In re McAllister; 646 So. 2d 173 (Fla. 1994). In this case, Judge McMillan has not been formally charged with any instances of lacking in candor or making any misrepresentations. Accordingly, any effort by the Judicial Qualifications Commission to offer exhibits or witnesses to suggest lack of candor is not relevant to the formal charges and should be excluded from the consideration of the Hearing Panel.

WHEREFORE, and by reason of the foregoing, Judge McMillan respectfully requests pre-trial rulings in limine excluding the exhibits, witnesses and testimony not properly related to the formal charges as referenced above.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19 day of October, 2000,  
the original of the foregoing Motion in Limine has been furnished  
by U.S. Mail to:

Honorable Thomas D. Hall  
Clerk  
Supreme Court of Florida  
500 Duval Street  
Tallahassee, Florida 32399

with copies to:

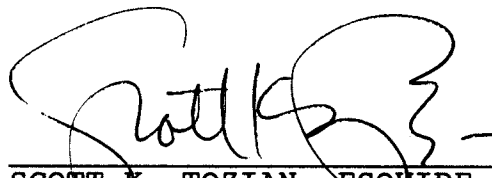
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